

ATTACHMENT 47

HIGHLY CONFIDENTIAL

Pontius, Robert

August 29, 2013

1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - - - -	x	MDL NO. 2002
	:	08-md-02002
	:	
IN RE: PROCESSED EGG PRODUCTS	:	
ANTITRUST LITIGATION	:	
	:	HIGHLY
	:	CONFIDENTIAL
	:	
- - - - -	x	

30(B)(6) DEPOSITION OF ROBERT PONTIUS

August 29, 2013

VOLUME 1

Reported by
Brooke R. Bohr
CSR No. 753

Henderson Legal Services, Inc.

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2 (Pages 2 to 5)

<p style="text-align: right;">2</p> <p>1 DEPOSITION OF ROBERT PONTIUS, taken at 2 the instance of the Defendants, at the Grove 3 Hotel, 245 S. Capitol Boulevard, in the City of 4 Boise, State of Idaho, commencing at 9:19 a.m., on 5 August 29, 2013, before Brooke R. Bohr, CSR, RPR, 6 a Notary Public in and for the State of Idaho, 7 pursuant to notice, and in accordance with the 8 applicable Rules of Civil Procedure. 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p>	<p style="text-align: right;">4</p> <p>1 A P P E A R A N C E S 2 3 FOR ROSE ACRE FARMS 4 Molly S. Crabtree 5 PORTER WRIGHT MORRIS & ARTHUR LLP 6 41 South High Street, Suites 2800-3200 7 Columbus, OH 43215-6194 8 (614) 227-2015 9 mcrabtree@porterwright.com 10 11 FOR NUCAL FOODS, INC. 12 (Appearing telephonically) 13 Margaret Ziemianek 14 KASOWITZ, BENSON, TORRES & FRIEDMAN LLP 15 101 California Street, Suite 2300 16 San Francisco, California 94111 17 (415) 421-6140 18 mziemianek@kasowitz.com 19 20 21 22</p>
<p style="text-align: right;">3</p> <p>1 A P P E A R A N C E S 2 3 FOR ALBERTSONS LLC AND ROBERT PONTIUS 4 Kevin J. Murray 5 KENNY NACHWALTER 6 1100 Miami Center, 201 S. Biscayne Boulevard 7 Miami, FL 33131-4327 8 (305) 373-1000 9 kmurray@kennynachwalter.com 10 11 Brian D. Bethke 12 LAW OFFICES OF BRIAN D. BETHKE 13 950 W. Bannock Street 14 Boise, ID 15 (208) 319-3811 16 17 FOR THE INDIRECT PURCHASERS 18 Keith D. Essenmacher 19 LOVELL STEWART HALEBIAN LLP 20 500 Fifth Avenue 21 New York, NY 10110 22 (212) 608-1900</p>	<p style="text-align: right;">5</p> <p>1 A P P E A R A N C E S 2 3 FOR MICHAEL FOODS, INC. 4 (Appearing telephonically) 5 Sharon Markowitz 6 LEONARD, STREET & DEINARD, P.A. 7 150 South Fifth Street, Suite 2300 8 Minneapolis, Minnesota 55402 9 (612) 335-7252 10 Sharon.Markowitz@leonard.com 11 12 FOR SPARBOE FARMS, INC. 13 (Appearing telephonically) 14 Troy Hutchinson 15 BRIGGS AND MORGAN 16 80 South Eighth Street 17 Minneapolis, Minnesota 55402 18 (612) 977-8400 19 thutchinson@briggs.com 20 21 VIDEOGRAPHER: 22 Chris Ennis</p>

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<p style="text-align: right;">6</p> <p>1 WITNESS</p> <p>2 ROBERT PONTIUS Page:</p> <p>3 Examination by Ms. Crabtree 9</p> <p>4 Examination by Mr. Murray 85</p> <p>5</p> <p>6 *****</p> <p>7</p> <p>8 EXHIBITS</p> <p>9 Page:</p> <p>10 Albertsons Exhibit 1 Notice of Deposition 17</p> <p>11 Albertsons Exhibit 2 Supplemental Responses 36</p> <p>12 Albertsons Exhibit 3 Albertsons Promotional Offer 40</p> <p>13 Form</p> <p>14 Albertsons Exhibit 4 Co-Pack Purchase Agreement 49</p> <p>15 Albertsons Exhibit 5 Quote 52</p> <p>16 Albertsons Exhibit 6 Packaging Cost Spreadsheet 60</p> <p>17 Albertsons Exhibit 7 First Amendment to 73</p> <p>18 Our Own Brands Supply Agreement</p> <p>19 Albertsons Exhibit 8 Spreadsheet 77</p> <p>20</p> <p>21 *****</p> <p>22</p>	<p style="text-align: right;">8</p> <p>1 MR. ESSENMACHER: Keith Essenmacher on</p> <p>2 behalf of the indirect purchasers.</p> <p>3 THE VIDEOGRAPHER: And if you can swear the</p> <p>4 witness.</p> <p>5 THE REPORTER: Okay --</p> <p>6 MS. MARKOWITZ: Sharon Markowitz for</p> <p>7 Michael Foods. Sorry.</p> <p>8 THE REPORTER: Please raise your right</p> <p>9 hand.</p> <p>10 MS. ZIEMIANEK: Margaret Ziemianek,</p> <p>11 Kasowitz Benson Torres & Friedman for NuCal Foods.</p> <p>12 THE REPORTER: Could you say that one more</p> <p>13 time? I'm sorry. I didn't catch the end.</p> <p>14 MS. ZIEMIANEK: Margaret Ziemianek of</p> <p>15 Kasowitz Benson Torres & Friedman for NuCal Foods.</p> <p>16 THE REPORTER: Thank you.</p> <p>17 Okay. Please raise your right hand.</p> <p>18</p> <p>19 ROBERT PONTIUS,</p> <p>20 produced as a witness at the instance of the</p> <p>21 Defendants, having been first duly sworn, was</p> <p>22 examined and testified as follows:</p>
<p style="text-align: right;">7</p> <p>1 BOISE, IDAHO</p> <p>2 August 29, 2013, 9:19 a.m.</p> <p>3</p> <p>4 THE VIDEOGRAPHER: Okay. So the camera</p> <p>5 is rolling, and we're on the record. We are</p> <p>6 videotaping this deposition. My name is Chris</p> <p>7 Ennis. I'm the owner of NuVision Productions,</p> <p>8 5178 South Sweetgrass here in Boise, Idaho.</p> <p>9 Today's date is August 29th. The</p> <p>10 approximate time is 9:19 a.m. mountain time.</p> <p>11 Today's deposition is being taken at The Grove</p> <p>12 Hotel in Boise, Idaho.</p> <p>13 The deponent's name is Bob Pontius.</p> <p>14 And if the counsel in the room and on the phones</p> <p>15 can identify themselves, please.</p> <p>16 MS. CRABTREE: Molly Crabtree for Rose Acre</p> <p>17 Farms.</p> <p>18 MR. MURRAY: Kevin Murray from Kenny</p> <p>19 Nachwalter on behalf of Albertsons LLC and the</p> <p>20 witness, Mr. Pontius.</p> <p>21 MR. BETHKE: Brian Bethke for Albertsons</p> <p>22 LLC.</p>	<p style="text-align: right;">9</p> <p>1</p> <p>2 EXAMINATION</p> <p>3 BY MS. CRABTREE:</p> <p>4 Q. Good morning.</p> <p>5 A. Good morning.</p> <p>6 Q. Long, though, it's been already.</p> <p>7 Could you please state your name for</p> <p>8 the record.</p> <p>9 A. Robert Pontius.</p> <p>10 Q. Mr. Pontius, by whom are you employed?</p> <p>11 A. Albertsons LLC.</p> <p>12 Q. And how long have you worked for</p> <p>13 Albertsons LLC?</p> <p>14 A. A little over three years.</p> <p>15 Q. So you started in 2009 or '10?</p> <p>16 A. '10.</p> <p>17 Q. And who did you work for before</p> <p>18 Albertsons LLC?</p> <p>19 A. Acosta Sales and Marketing.</p> <p>20 Q. Can you spell that?</p> <p>21 A. A-c-o-s-t-a Sales and Marketing.</p> <p>22 Q. And what did you do for Acosta Sales</p>

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<p style="text-align: right;">10</p> <p>1 and Marketing?</p> <p>2 A. I was a business manager.</p> <p>3 Q. How long were you with Acosta?</p> <p>4 A. For three years.</p> <p>5 Q. And before Acosta, where did you work?</p> <p>6 A. I worked for Albertsons.</p> <p>7 Q. Is that Albertsons, Inc.?</p> <p>8 A. The original Albertsons, yes.</p> <p>9 Q. The original. We'll call them the</p> <p>10 original then. What did you do with the original</p> <p>11 Albertsons?</p> <p>12 A. A variety of positions, ending with</p> <p>13 sourcing manager.</p> <p>14 Q. How long were you the -- a sourcing</p> <p>15 manager with Albertsons?</p> <p>16 A. About 13 months.</p> <p>17 Q. And before that, what did you do?</p> <p>18 A. Buyer in Phoenix, Arizona. A warehouse</p> <p>19 buyer in Phoenix, Arizona.</p> <p>20 Q. And how long were you a warehouse buyer</p> <p>21 in Phoenix?</p> <p>22 A. About five years.</p>	<p style="text-align: right;">12</p> <p>1 Q. So you had the opportunity to go to</p> <p>2 Minneapolis but decided to stay here?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And when you rejoined</p> <p>5 Albertsons LLC in 2010, what position have you</p> <p>6 held there?</p> <p>7 MR. MURRAY: Object to the form of the</p> <p>8 question, "rejoined."</p> <p>9 MS. CRABTREE: Agreed.</p> <p>10 Q. BY MS. CRABTREE: When you started with</p> <p>11 Albertsons LLC, what's your position with</p> <p>12 Albertsons LLC?</p> <p>13 A. Private label merchandiser.</p> <p>14 Q. And what does that mean?</p> <p>15 A. I'm responsible for the sales and</p> <p>16 merchandising aspects of all private label</p> <p>17 products.</p> <p>18 Q. Does that include eggs and egg</p> <p>19 products?</p> <p>20 A. It does.</p> <p>21 Q. And when you were with the original</p> <p>22 Albertsons, did you deal with eggs and egg</p>
<p style="text-align: right;">11</p> <p>1 Q. And before that?</p> <p>2 A. Store director.</p> <p>3 Q. How long were you a store director?</p> <p>4 A. About three years.</p> <p>5 Q. And before that?</p> <p>6 A. Grocery manager, about four years.</p> <p>7 Q. Before that?</p> <p>8 A. Grocery clerk.</p> <p>9 Q. So you -- you started there, right?</p> <p>10 A. Yeah. I -- I started as a bagger.</p> <p>11 So . . .</p> <p>12 Q. Okay. And when did you start with the</p> <p>13 original Albertsons?</p> <p>14 A. 1986.</p> <p>15 Q. And you were there until 2007?</p> <p>16 A. Correct.</p> <p>17 Q. And why did you leave?</p> <p>18 A. SUPERVALU purchased the original</p> <p>19 Albertsons and they were moving my job function to</p> <p>20 Minneapolis.</p> <p>21 Q. And --</p> <p>22 A. I wanted to stay here.</p>	<p style="text-align: right;">13</p> <p>1 products?</p> <p>2 A. Only from the aspect of when I was a</p> <p>3 store manager and a grocery manager, sold the</p> <p>4 products in our stores.</p> <p>5 Q. Were you ever responsible for sourcing</p> <p>6 eggs and egg products?</p> <p>7 A. Not with the original Albertsons.</p> <p>8 Q. But you are with the current?</p> <p>9 A. I am today, yes.</p> <p>10 Q. Okay. How many grocery stores does</p> <p>11 Albertsons LLC own?</p> <p>12 MR. MURRAY: Objection. You've got to put a</p> <p>13 time limit on that because it's changed</p> <p>14 significantly.</p> <p>15 Q. BY MS. CRABTREE: Okay. Starting in</p> <p>16 2010, how many grocery stores did Albertsons LLC</p> <p>17 own?</p> <p>18 A. At that time, it was about 225.</p> <p>19 Q. What about currently?</p> <p>20 A. The Albertsons LLC that we're talking</p> <p>21 about operates 192 stores. In March of this year,</p> <p>22 we purchased a large block of stores from</p>

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<p style="text-align: right;">14</p> <p>1 SUPERVALU. And so all told between both 2 organizations we are around 1,060. 3 Q. And the stores that you bought in 4 March, were those stores that the original 5 Albertsons had control over? 6 A. Prior to 2006, correct. 7 Q. So prior to 2006, how many stores did 8 the original Albertsons own? 9 A. Including drugstores and -- and fuel 10 kiosks and everything, I believe the number was 11 around 2,500. 12 Q. Okay. So the number of stores 13 Albertsons LLC now owns is about half of what the 14 original Albertsons owned before SUPERVALU bought 15 some? 16 A. That would be accurate. 17 Q. Got it. 18 With Albertsons LLC, what types of 19 eggs and egg products does Albertsons LLC 20 purchase? 21 A. We purchase shell -- fresh shell eggs; 22 we purchase specialty eggs; we purchase liquid</p>	<p style="text-align: right;">16</p> <p>1 Q. For what time period is Albertsons LLC 2 claiming that it purchased eggs and egg products 3 for which it's seeking damages in this suit? 4 MR. MURRAY: Object to the form of the 5 question to the extent it calls for a legal 6 conclusion. 7 THE WITNESS: I -- I'm not really sure. 8 I'd have to . . . 9 Q. BY MS. CRABTREE: So Albertsons LLC has 10 existed since 2006; is that correct? 11 A. Yes. 12 Q. And has it been purchasing eggs and egg 13 products since 2006? 14 A. Yes. 15 Q. But Albertsons LLC didn't exist before 16 2006, correct? 17 A. Correct. 18 Q. So it couldn't have bought eggs and egg 19 products prior to that period? 20 A. Correct. 21 Q. Okay. I'm going to go ahead and show 22 you what we've marked as exhibit -- Albertsons</p>
<p style="text-align: right;">15</p> <p>1 eggs; and we purchase frozen liquid eggs. 2 Q. Frozen liquid? 3 A. Yeah. 4 Q. Let me back up one second. 5 A. Sure. 6 Q. The -- the footprint of Albertsons LLC 7 since March, what would be the geographic 8 footprint of the current LLC? 9 A. I think we operate in about 18 10 different states. We have the -- pretty much 11 the entire western half of the United States, 12 running across the southern half, and then we 13 have Jewel, Acme, and Shaw's in the Midwest and 14 Northeast. 15 Q. That was going to be my next question. 16 What -- what are the different names of the 17 grocery stores that Albertsons LLC currently 18 runs? 19 A. We have the Albertsons banner, the 20 Lucky banner, Super Saver banner, Jewel-Osco 21 banner, Acme banner, Shaw's banner, and Star 22 banner.</p>	<p style="text-align: right;">17</p> <p>1 Exhibit 1. 2 (Albertsons Exhibit 1 marked.) 3 MR. MURRAY: Thank you. 4 Wait a minute. You might want to look 5 through this. It's got some -- 6 MS. CRABTREE: Oh, it's got a fax on it, 7 doesn't it. 8 MR. MURRAY: -- some notes. And so I didn't 9 look at what anything is written there -- 10 MS. CRABTREE: That's a fax cover sheet. 11 MR. MURRAY: -- wrote -- whatever. This -- 12 maybe you might want to check the one that the 13 witness has marked too before you . . . 14 MS. CRABTREE: Um-hmm. 15 MR. HUTCHINSON: Have we taken a roll call 16 yet? I just got on a little late. 17 MS. CRABTREE: Hi, Troy. We did, but you 18 can appear now if you want. Go ahead. 19 MR. HUTCHINSON: Okay. This is Troy 20 Hutchinson on behalf of Sparboe Farms. 21 MS. CRABTREE: I think it went though. 22 Q. BY MS. CRABTREE: Ready?</p>

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<p style="text-align: right;">18</p> <p>1 A. I believe so.</p> <p>2 Q. Do you recognize Exhibit 1?</p> <p>3 A. I do.</p> <p>4 Q. And Exhibit 1 is a 30(b)(6) notice to</p> <p>5 Albertsons LLC. Do you understand that you've</p> <p>6 been designated to speak on behalf of Albertsons</p> <p>7 LLC for the topics in this notice?</p> <p>8 A. Yes, ma'am.</p> <p>9 Q. And are you prepared to speak to all of</p> <p>10 the topics in this notice?</p> <p>11 A. Yes, ma'am.</p> <p>12 Q. What did you do to prepare for your</p> <p>13 deposition today?</p> <p>14 A. Talked with a -- a few individuals that</p> <p>15 had knowledge of eggs and egg procurement,</p> <p>16 sourcing, negotiations, and did a little bit of</p> <p>17 research on sales quantities and . . .</p> <p>18 Q. Who were the individuals you spoke</p> <p>19 with?</p> <p>20 A. Mike Spiller, Tim Puckett, Tim Ryan,</p> <p>21 Mark Klewin, Marc Nosal.</p> <p>22 Q. And what are their positions</p>	<p style="text-align: right;">20</p> <p>1 A. Mark Klewin is our procurement manager</p> <p>2 in the Phoenix distribution center.</p> <p>3 Q. And the last name was Mike Nosal?</p> <p>4 A. Marc Nosal.</p> <p>5 Q. Oh, Marc Nosal.</p> <p>6 A. Yep.</p> <p>7 Q. I keep getting my Mikes and Marks . . .</p> <p>8 A. Marc Nosal is the sourcing manager for</p> <p>9 SUPERVALU.</p> <p>10 Q. And was -- did you speak to each of</p> <p>11 these gentlemen individually or as a group?</p> <p>12 A. Three of them were in -- were in a</p> <p>13 group phone call and the other were individual.</p> <p>14 Q. So Spiller -- who was in the group</p> <p>15 phone call?</p> <p>16 A. The three from the southwest</p> <p>17 division -- Mike Spiller, Tim Puckett, and</p> <p>18 Tim Ryan.</p> <p>19 Q. And you mentioned that Tim Ryan and</p> <p>20 Tim Puckett were both category managers. What</p> <p>21 category are they assigned to?</p> <p>22 A. Tim Ryan is in charge of the dairy</p>
<p style="text-align: right;">19</p> <p>1 in Albertsons -- are those all Albertsons LLC</p> <p>2 employees?</p> <p>3 A. They are not.</p> <p>4 Q. Who -- who are they? Let's start with</p> <p>5 Mike Spiller.</p> <p>6 A. Mike Spiller is a private label</p> <p>7 merchandiser in the southwest division.</p> <p>8 Q. With Albertsons?</p> <p>9 A. With Albertsons LLC, yes.</p> <p>10 Q. And Tim Puckett?</p> <p>11 A. Tim Puckett is a category manager in</p> <p>12 the southwest division for Albertsons LLC.</p> <p>13 Q. I believe the next name was Tim Ryan?</p> <p>14 A. Tim Ryan is a category manager in the</p> <p>15 southwest division for Albertsons LLC.</p> <p>16 Q. I missed the next one. Was it Mike --</p> <p>17 MR. MURRAY: Mark.</p> <p>18 MS. CRABTREE: Pardon? McKlewin?</p> <p>19 THE WITNESS: Mark Klewin.</p> <p>20 Q. BY MS. CRABTREE: Mark Klewin.</p> <p>21 A. Um-hum.</p> <p>22 Q. And who is Mark Klewin?</p>	<p style="text-align: right;">21</p> <p>1 category.</p> <p>2 Q. And Mr. Puckett?</p> <p>3 A. And Tim Puckett is in charge of the</p> <p>4 frozen category.</p> <p>5 Q. And what did you discuss on that phone</p> <p>6 call?</p> <p>7 A. I tried to get a deeper understanding</p> <p>8 for the merchandising aspects at store level with</p> <p>9 regards to eggs and egg products.</p> <p>10 Q. When you say "merchandising," do you</p> <p>11 mean retail sale?</p> <p>12 A. Yeah. Retail -- all the retail sales</p> <p>13 functions.</p> <p>14 Q. Do any of the gentlemen on that phone</p> <p>15 have responsibility for choosing an egg supplier?</p> <p>16 A. They do not.</p> <p>17 Q. Who at Albertsons makes a final</p> <p>18 decision on who you purchase eggs and egg products</p> <p>19 from?</p> <p>20 MR. MURRAY: When you're referring to</p> <p>21 Albertsons, now you're referring to the LLC?</p> <p>22 MS. CRABTREE: The LLC.</p>

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<p style="text-align: right;">22</p> <p>1 MR. MURRAY: Okay. Why don't we say that 2 you'll -- the term "Albertsons" will refer to the 3 LLC unless otherwise . . .</p> <p>4 MS. CRABTREE: The old Albertsons or 5 original Albertsons I'll clarify for time 6 purposes. Right now, we're just talking about 7 Albertsons LLC.</p> <p>8 THE WITNESS: Okay. Okay. 9 I'm the one responsible for making 10 those decisions.</p> <p>11 Q. BY MS. CRABTREE: And what was your 12 conversation with Mark Klewin about?</p> <p>13 A. In speaking with Mark Klewin, I tried 14 to get a better understanding of the actual 15 procurement process, the buying process from the 16 egg supplier to the distribution center to the 17 stores.</p> <p>18 Q. And your conversation with Marc Nosal?</p> <p>19 A. Marc Nosal is the sourcing manager for 20 SUPERVALU. So when I spoke with him, I was trying 21 to get a better understanding of how the egg 22 supplier sourcing decisions were made from 2006</p>	<p style="text-align: right;">24</p> <p>1 Cal-Maine, Zephyr, Sparboe, Hickman's, and Rocky 2 Mountain Eggs.</p> <p>3 Q. And that's of 2006?</p> <p>4 A. That was -- yeah, during --</p> <p>5 Q. Okay. So let's take it --</p> <p>6 A. -- that time frame.</p> <p>7 Q. Year by year.</p> <p>8 A. Okay.</p> <p>9 Q. So that's 2006. Who -- what about 10 2007?</p> <p>11 A. So in 2007, we would have been doing 12 business with pretty much all of those same 13 suppliers.</p> <p>14 Q. And 2008?</p> <p>15 A. 2008, we would have sold off the piece 16 of business that was supplied by NuCal.</p> <p>17 Q. But otherwise -- oh, go ahead.</p> <p>18 A. Otherwise, everybody else we still did 19 business with.</p> <p>20 Q. In 2009?</p> <p>21 A. 2009, I believe that was the 22 approximate time that Cal-Maine acquired Zephyr</p>
<p style="text-align: right;">23</p> <p>1 until 2010 --</p> <p>2 Q. And would those be --</p> <p>3 A. -- when I came on board.</p> <p>4 Q. Okay. So did Mr. Nosal used to work 5 for Albertsons LLC?</p> <p>6 A. He did not. He worked for SUPERVALU.</p> <p>7 Q. Okay.</p> <p>8 A. So . . .</p> <p>9 Q. So from 2006 to 2010, who was in charge 10 of procuring eggs and egg products for Albertsons 11 LLC?</p> <p>12 A. Marc Nosal and SUPERVALU managed that 13 process as part of a transitional service 14 agreement between SUPERVALU and Albertsons LLC.</p> <p>15 Q. From 2006 to -- or to currently, who 16 does Albertsons purchase shell eggs from?</p> <p>17 A. We have several different suppliers 18 in -- in different parts of the country. In 2006, 19 we had locations open at that point that we do not 20 have open any longer. So there were -- there were 21 several suppliers that we did business with then 22 that we don't do now. NuCal Farms, Moark,</p>	<p style="text-align: right;">25</p> <p>1 Hills. So it would have consolidated that piece 2 of business.</p> <p>3 Q. But you continued to --</p> <p>4 A. Buy from Cal-Maine.</p> <p>5 Q. So your volume would have been the 6 same, but it would have come through Cal-Maine 7 instead of Zephyr?</p> <p>8 A. (Witness nods head.)</p> <p>9 Q. What about 2010?</p> <p>10 A. 2010 would have been the same -- same 11 group of suppliers.</p> <p>12 Q. 2011?</p> <p>13 A. 2011, we made some supply changes. We 14 eliminated Sparboe Farms and Moark.</p> <p>15 Q. 2012?</p> <p>16 A. 2012 would have been Hickman's, 17 Rocky Mountain Eggs, Cal-Maine, and that would be 18 it.</p> <p>19 Q. And 2013, I take it is going to be two 20 pieces --</p> <p>21 A. Yeah.</p> <p>22 Q. -- so let's say preacquisition.</p>

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<p style="text-align: right;">26</p> <p>1 A. Preacquisition is Hickman's, Rocky 2 Mountain Eggs, Cal-Maine. Postacquisition is 3 going to be those three plus -- there's a -- 4 there's a bunch of new suppliers, and I'm sorry, I 5 do not -- I do not know those all by memory. 6 Q. What products were you purchasing from 7 NuCal from 2006 to 2008? 8 A. Shell -- just shell eggs. And that 9 would include both commodity eggs and specialty 10 eggs. 11 Q. What do you consider specialty eggs? 12 A. Anything that has a health benefit 13 claim or like a free-range, cage-free aspect to 14 it. 15 Q. Were you buying UEP certified eggs from 16 NuCal? 17 A. Yes. 18 Q. Was that a requirement for the eggs 19 that you were purchasing? 20 A. Yes. 21 Q. Why did you require UEP certified 22 eggs?</p>	<p style="text-align: right;">28</p> <p>1 A. And that is -- that was ConAgra at 2 that -- in the early years. In 2011, we switched 3 from ConAgra to Michael Foods for our liquid egg 4 products. 5 Q. And do you still purchase from Michael 6 Foods today? 7 A. We do. 8 Q. Do you require that your liquid eggs be 9 UEP certified? 10 A. I do not know. 11 Q. Do you know if they are? 12 A. Do I know if they are? 13 Q. If they are? 14 A. I do not know. 15 Q. Where would you go to find that out? 16 A. I could look at a package or refer to 17 the contract. 18 Q. Did you look at any documents to 19 prepare for today? 20 A. I did. 21 Q. Did you look at any of the contracts 22 you have with these suppliers?</p>
<p style="text-align: right;">27</p> <p>1 A. The requirement for UEP certified eggs 2 preexisted, so as we moved the business forward, 3 we kept it consistent and kept that requirement in 4 place. Just to, I guess, keep the program 5 consistent, keep the shopping experience 6 consistent for our customers. 7 Q. Do you still require UEP certified 8 eggs? 9 A. We do. 10 Q. What about Moark? What were you 11 purchasing from Moark from 2006 to 2011? 12 A. Shell eggs, to include commodity and 13 specialty eggs. 14 Q. No egg products? 15 A. Not from Moark. 16 Q. Okay. How about Cal-Maine? What 17 have you purchased from Cal-Maine from 2006 to 18 present? 19 A. Shell eggs, to include commodity and 20 specialty. I'm sorry, I -- I did neglect to 21 mention the supplier for the liquid eggs. 22 Q. Okay.</p>	<p style="text-align: right;">29</p> <p>1 A. I looked at the ones for the shell 2 eggs. I did -- I did not look at the contract for 3 the liquid eggs. SUPERVALU owns that contract, 4 and I just didn't think to grab that. 5 Q. Do you know if that -- if the ConAgra 6 and Michael contracts have been produced in this 7 case? 8 A. I do not know. 9 Q. How about Zephyr? What were you 10 purchasing from Zephyr up until the point 11 Cal-Maine purchased them? 12 A. Shell eggs, to include commodity and 13 specialty. 14 Q. And Sparboe Farms from 2006 to 2011? 15 A. Shell eggs, commodity and specialty. 16 Q. Why did you stop purchasing eggs from 17 Moark in 2011? 18 A. We put the egg supply contracts out to 19 bid and found a supplier that could do it at a 20 better price for us. 21 Q. Who is that supplier? 22 A. Hickman's.</p>

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<p style="text-align: right;">30</p> <p>1 Q. That's who took over the Moark 2 business?</p> <p>3 A. The Moark business.</p> <p>4 Q. And why did you stop purchasing eggs 5 from Sparboe in 2011?</p> <p>6 A. In 2011, Sparboe Farms had an animal 7 mistreatment expose that was on the news or -- and 8 so that prompted a -- a supply change.</p> <p>9 Q. How did you become aware of that 10 publicity from -- that Sparboe received in 2011?</p> <p>11 A. We got an E-mail from Sparboe 12 indicating that it was going to play on television 13 and then saw the actual television program as 14 well.</p> <p>15 Q. Who received the E-mail from Sparboe?</p> <p>16 A. I did.</p> <p>17 Q. Who sent it to you?</p> <p>18 A. I believe it was David Collie from 19 Sparboe Farms.</p> <p>20 Q. Do you know how to spell his last name?</p> <p>21 A. C-o-l-l-i-e.</p> <p>22 Q. And when you received that E-mail, you</p>	<p style="text-align: right;">32</p> <p>1 Q. Do you know if anyone at Albertsons 2 did?</p> <p>3 A. Not that I'm aware of.</p> <p>4 Q. So why did you make the ultimate 5 decision to move away from Sparboe in 2011?</p> <p>6 A. We thought it was safer, I guess, from 7 a -- from a consumer perception perspective.</p> <p>8 Q. Did you hear from any animal rights 9 groups after that TV special?</p> <p>10 A. I did not.</p> <p>11 Q. Was Albertsons ever identified with 12 that TV special or named as one of Sparboe's 13 clients?</p> <p>14 A. I don't believe so.</p> <p>15 Q. Who took over that Sparboe business?</p> <p>16 A. Hickman's.</p> <p>17 Q. Did you put it out to bid?</p> <p>18 A. I did not.</p> <p>19 Q. How did you determine what price 20 Hickman's would sell eggs in that area -- that was 21 a terrible question.</p> <p>22 If you didn't put it out to bid, how</p>
<p style="text-align: right;">31</p> <p>1 then watched the television program?</p> <p>2 A. Yes.</p> <p>3 Q. And then what did you do?</p> <p>4 A. And then we started talking with the 5 division that's responsible for those stores to 6 get their thoughts on whether or not we needed to 7 make a supply change.</p> <p>8 Q. And what division was that?</p> <p>9 A. That was the southwest division.</p> <p>10 Q. And who did you speak with about that?</p> <p>11 A. Quite a variety of folks within the 12 merchandising department.</p> <p>13 Q. Do you remember any in particular?</p> <p>14 A. I know we talked to Tim Ryan, and I 15 think we talked with Ken Diehl.</p> <p>16 Q. What does Mr. Diehl do?</p> <p>17 A. At that time, he was the vice president 18 of marketing and merchandising in the southwest 19 division.</p> <p>20 Q. Did you hear from any of your customers 21 after the TV special ran?</p> <p>22 A. I did not.</p>	<p style="text-align: right;">33</p> <p>1 did you determine the price that Hickman's would 2 charge?</p> <p>3 A. We were already doing business with 4 Hickman's in the Arizona and New Mexico markets, 5 so we utilized the same formula for pricing to 6 determine the Colorado pricing.</p> <p>7 Q. Did the pricing from Hickman's differ 8 at all from the Sparboe pricing?</p> <p>9 A. It did.</p> <p>10 Q. Was it more or less?</p> <p>11 A. It was more.</p> <p>12 Q. And Hickman's was required to provide 13 UEP certified eggs?</p> <p>14 A. Yes.</p> <p>15 Q. Have you ever entertained a bid from a 16 non-UEP certified company?</p> <p>17 A. No, I haven't entertained a bid from 18 one. A current supplier has offered non-UEP 19 certified eggs, but we elected to stick with UEP 20 certified.</p> <p>21 Q. And who was that supplier?</p> <p>22 A. Hidden Villa Ranch.</p>

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<p style="text-align: right;">34</p> <p>1 Q. What do you purchase from Hidden Villa?</p> <p>2 A. Shell eggs and specialty eggs.</p> <p>3 Q. For what time periods have you been</p> <p>4 purchasing from Hidden Villa?</p> <p>5 A. They are one of the brand new -- they</p> <p>6 are a supplier in one of the brand new divisions</p> <p>7 that we just acquired in March.</p> <p>8 Q. And were the non-UEP certified eggs</p> <p>9 that Hidden Villa offered you, did they cost less</p> <p>10 than the UEP certified eggs?</p> <p>11 A. They do.</p> <p>12 Q. Do you remember by how much?</p> <p>13 A. About two cents a dozen.</p> <p>14 Q. And you decided not to purchase the</p> <p>15 non-UEP certified eggs?</p> <p>16 A. Correct.</p> <p>17 Q. What area does Hidden Villa service?</p> <p>18 A. Southern California.</p> <p>19 Q. Do you know about how many stores they</p> <p>20 service?</p> <p>21 A. 196?</p> <p>22 Q. What products have you purchased from</p>	<p style="text-align: right;">36</p> <p>1 ready package.</p> <p>2 Q. So you're not using it as an ingredient</p> <p>3 in anything?</p> <p>4 A. No. No.</p> <p>5 Q. Do you purchase any dried eggs?</p> <p>6 A. Not that I'm aware of.</p> <p>7 Q. I'm going to show you what has been</p> <p>8 marked -- or what will be marked as Exhibit 2. If</p> <p>9 you could take a moment to look this -- take a</p> <p>10 moment to look this over.</p> <p>11 (Albertsons Exhibit 2 marked.)</p> <p>12 Q. BY MS. CRABTREE: This is a document</p> <p>13 entitled "Direct Action Plaintiff Albertsons LLC's</p> <p>14 Supplemental Responses to Defendants' First Set of</p> <p>15 Interrogatories." And I'll tell you most of my</p> <p>16 questions are going to be about Exhibit A.</p> <p>17 So . . .</p> <p>18 A. Okay. Okay.</p> <p>19 Q. Do you recognize this document?</p> <p>20 A. I do.</p> <p>21 Q. Do you know how Exhibit A was created?</p> <p>22 A. All I know about it is that it was</p>
<p style="text-align: right;">35</p> <p>1 Hickman's from 2006 to present?</p> <p>2 A. Shell eggs, both commodity and</p> <p>3 specialty.</p> <p>4 Q. And Rocky Mountain?</p> <p>5 A. Shell eggs, both commodity and</p> <p>6 specialty.</p> <p>7 Q. Who do you purchase your frozen eggs</p> <p>8 from?</p> <p>9 A. I -- I do not know.</p> <p>10 Q. Where would you go to find that</p> <p>11 information?</p> <p>12 A. I would check with one of the</p> <p>13 distribution centers to see who the vendor is for</p> <p>14 those products.</p> <p>15 Q. Do you know if it's just one vendor or</p> <p>16 multiple?</p> <p>17 A. It's just one vendor. It's -- it's a</p> <p>18 single -- just a one-item category. It's very</p> <p>19 small.</p> <p>20 Q. What do you do with the frozen liquid</p> <p>21 that you purchase?</p> <p>22 A. It is -- it's in a retail customer-</p>	<p style="text-align: right;">37</p> <p>1 created by the lawyers. They took documents</p> <p>2 from -- they took documents that we had handed</p> <p>3 over and created the -- the exhibit.</p> <p>4 Q. To your knowledge, did anyone at</p> <p>5 Albertsons check the accuracy of Exhibit A?</p> <p>6 A. Not to my knowledge.</p> <p>7 Q. So do you know, sitting here today,</p> <p>8 whether Exhibit A is, in fact, accurate?</p> <p>9 A. I'm not really sure. I would have to</p> <p>10 see the source documents to be able to provide</p> <p>11 context, I guess.</p> <p>12 Q. Okay. Well, let's look at -- let's</p> <p>13 start with page 1.</p> <p>14 A. Um-hum.</p> <p>15 Q. And you see there the first exhibit is</p> <p>16 a date range, then Plaintiff, then Supplier, then</p> <p>17 Product, and Pricing/Terms. And the first entry</p> <p>18 indicates, under Pricing and Terms, ".2025 cost."</p> <p>19 Do you know what that means?</p> <p>20 MR. MURRAY: Are you looking at this page?</p> <p>21 THE WITNESS: Yeah.</p> <p>22 MR. MURRAY: Okay.</p>

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<p style="text-align: right;">38</p> <p>1 THE WITNESS: Yeah, I -- I do not know 2 offhand. I mean I'm not sure what that is. I 3 would have to see the -- the source document. 4 Q. BY MS. CRABTREE: Do you purchase eggs 5 from Cal-Maine on -- based off of an Urner Barry 6 quote? 7 A. We do. 8 Q. Do you ever purchase off of a cost 9 plus? 10 A. Not that I'm aware of. 11 Q. Okay. For all of your shell egg 12 purchases, do you use Urner Barry for pricing? 13 A. For all of our commodity egg purchases, 14 yes. 15 Q. What about for specialty eggs? 16 A. Specialty eggs are -- those are 17 supplier-directed prices. 18 Q. And if you look further down that first 19 page, four lines up from the bottom -- well, 20 another question first. Do you see the date range 21 for that first entry is January 28th, 2005? 22 A. Um-hum.</p>	<p style="text-align: right;">40</p> <p>1 Terms, ".47 unit cost, Urner Barry Market." Do 2 you know what that means? 3 A. I'm not 100 percent sure without seeing 4 the -- the source document. 5 Q. Let's go ahead and look at one of 6 those. 7 MS. CRABTREE: Let's mark Exhibit 3. 8 (Albertsons Exhibit 3 marked.) 9 Q. BY MS. CRABTREE: And Exhibit 3 -- if 10 you'll excuse my handwritten Bates on the 11 bottom -- it was an Excel spreadsheet. It's 12 ALBEG 16. And if you turn to page 6 of Exhibit A, 13 and it's in 16 through 27. Okay. 14 Well, first of all, can you tell me 15 what Exhibit 3 is? 16 A. It's a promotional offer form. 17 Q. And when does Albertsons use 18 promotional offer forms? 19 A. When a supplier is offering allowances 20 or -- or promotional monies to be used for 21 discounting products. 22 Q. And how does that work?</p>
<p style="text-align: right;">39</p> <p>1 Q. Did Albertsons LLC exist in 2005? 2 A. We did not. 3 Q. Do you know why you would have data 4 going back to 2005? 5 A. That's probably data from the original 6 Albertsons. 7 Q. So purchases from 2005 would not be 8 purchases that Albertsons LLC made, correct? 9 A. That's correct. 10 Q. And if you see four lines up from the 11 bottom, there's an entry for Michael Foods? 12 A. Um-hum. 13 Q. It says "Liquid Egg White"? 14 A. Um-hum. 15 Q. Does that refresh your recollection of 16 who you -- from whom you buy liquid eggs -- oh, 17 you told me you bought them from Michael's, 18 correct? 19 A. Yeah. 20 Q. It was frozen we didn't know. 21 A. Correct. 22 Q. And this indicates under Pricing and</p>	<p style="text-align: right;">41</p> <p>1 A. A supplier -- if a supplier wants to 2 sell more of a specific product, they'll give us 3 money off of the case cost or against scan 4 movement to discount, promote, advertise, display 5 their products during a specific window. 6 Q. So that would be an additional discount 7 that you'd have your price based off of the Urner 8 Barry, correct? 9 A. Um-hum. 10 Q. And is that price always some amount 11 less than the Urner Barry market? 12 A. A promotional allowance would be a 13 discount off of whatever the established price for 14 that time frame was, yeah. 15 Q. Okay. So it would be additional? 16 A. Um-hum. 17 Q. So if you had a contract that specified 18 a certain cents off the Urner Barry market and 19 you were running a promotion with that supplier, 20 the cost you were paying for those eggs would be 21 even less than what the contract indicated, 22 correct?</p>

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<p style="text-align: right;">42</p> <p>1 A. Could be -- 2 Q. Okay. 3 A. -- if -- if there was a promotional 4 offer form during that time frame. 5 Q. All right. And it looks like -- can 6 you tell me what supplier Exhibit 3 relates to? 7 A. On page 1, it's from Hickman's Family 8 Farms. 9 Q. Okay. And if you could go through and 10 confirm for me that all the pages in this exhibit 11 relate to Hickman's? 12 A. They do not. 13 Q. Which ones do not relate to Hickman's? 14 A. The last two pages are from Moark. 15 Q. Okay. And the last page of this is an 16 Albertsons Cost Change Form. Is this an 17 Albertsons form? 18 A. It is. 19 Q. And what do you use this form for? 20 A. The cost of eggs pretty much change 21 every week based on whatever the Urner Barry 22 average is that's published. So we use this to</p>	<p style="text-align: right;">44</p> <p>1 Exhibit 2, just to be more confusing, you'll see 2 the last line there indicates a date of 2005 to 3 2006. 4 And it lists the supplier as Sparboe, 5 and it looks like it lists some pricing and terms, 6 and under Type it says "Executed Contract." And 7 then under Source, it gives the Bates number for 8 this Exhibit 3. 9 A. Um-hum. 10 Q. Does Exhibit 3 at all relate to the 11 2005, 2006 time frame? 12 MR. MURRAY: I -- I'm going to object. The 13 Bates numbers are different. There's -- there's 14 more letters in the -- it is ALGBEGED, and the 15 "ED" isn't on the chart. 16 MS. CRABTREE: Okay. 17 MR. MURRAY: There's a -- there's a 18 difference in the Bates numbers. The preface to 19 the actual numbers is -- is different. 20 MS. CRABTREE: Okay. 21 THE WITNESS: This -- this document doesn't 22 have anything to do with that line item, no.</p>
<p style="text-align: right;">43</p> <p>1 help our -- our buyers establish the correct cost 2 in the buying system when they make their 3 purchases. 4 Q. So do all of your suppliers submit 5 these cost change forms weekly? 6 A. Either this form or something very 7 similar, yes. 8 Q. And who receives those? 9 A. There's a whole host of people that get 10 it. 11 Q. Do you receive them? 12 A. I do. 13 Q. Do you keep them somewhere? 14 A. I do. 15 Q. Where do you keep them? 16 A. I have electronic files for all weekly 17 cost changes. 18 Q. Okay. So Exhibit 3 -- excuse me -- 19 appears to relate to Hickman's and Moark, correct? 20 A. Correct. 21 Q. And if you look at the very bottom of 22 page 5 of Exhibit 2 -- page 5 of Exhibit A of</p>	<p style="text-align: right;">45</p> <p>1 Q. BY MS. CRABTREE: Okay. And if you 2 look at Exhibit 3, it indicates the "Albertsons 3 Promotional Offer Form," that first page? 4 A. Um-hum. 5 Q. How often do you receive these 6 Promotional Offer Forms? 7 A. It varies. We get them -- we get them 8 every day from all the different suppliers. But 9 specifically to eggs, it -- it varies greatly. I 10 mean, there's some that never turn anything like 11 this in. They never promote. 12 Q. When you do get them, do you keep them 13 in any particular file? 14 A. The merchandisers do, yes. They -- 15 they're required to keep them. 16 Q. Would you receive them? 17 A. I would not. 18 Q. Okay. So these go directly to the 19 merchandisers in the regions? 20 A. To the division, yes. 21 Q. And how often do you run specials on 22 eggs?</p>

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<p style="text-align: right;">46</p> <p>1 A. Very often. I would probably say two 2 to three times a month. 3 Q. Why do you run them so often? 4 A. It's a great traffic driver, and it 5 is a very sensitive item from a consumer 6 perspective. 7 Q. What do you mean by "sensitive item"? 8 A. Consumers know and understand eggs, 9 high household penetration, a lot of people use 10 them. So it's pretty much on everybody's 11 shopping -- shopping list every week. So it's a 12 good item to get the customer in. 13 Q. So when you run specials two to three 14 times a month, are -- do you ask for a lower price 15 whenever you run a special from your supplier? 16 A. Not always. 17 Q. Do you ever sell eggs at a loss? 18 A. Yes. 19 Q. Are you familiar with the term "loss 20 leader"? 21 A. Yes. 22 Q. What does that mean?</p>	<p style="text-align: right;">48</p> <p>1 A. For the most part, it's based on 2 competitive market pressure. 3 Q. And you said that the price that you 4 pay for eggs varies pretty much weekly? 5 A. Yes. 6 Q. How often do you change the retail cost 7 based on your supplier cost? 8 A. Not very often. We -- well, I take 9 that back. With specialty eggs, we do make 10 changes based on cost on -- on what our supplier 11 cost is. With commodity eggs, we base our pricing 12 off of what the market and the competition is 13 doing. 14 Q. The retail market? 15 A. The retail market, yes. 16 Q. So if you're paying more to your 17 supplier for eggs, you wouldn't necessarily be 18 charging your customers more for those eggs? 19 A. Correct. 20 Q. Is there a point at which your 21 commodity egg costs would increase to a point 22 where you would change the retail costs?</p>
<p style="text-align: right;">47</p> <p>1 A. That means there -- there are some 2 items that we lose money intentionally on because 3 it's sensitive to a customer or it is a good item 4 to bring customers into the store. 5 Q. And is eggs one of the items that you 6 use as a loss leader? 7 A. Yes. 8 Q. How often are you selling eggs at a 9 loss? 10 MR. MURRAY: Object to the form of the 11 question. It is vague. 12 THE WITNESS: It would depend. I mean, 13 each division is going to have different 14 merchandising and advertising philosophies and -- 15 and timing. 16 And it depends on the competitive 17 market, you know, what is going on in the market. 18 If you're in an area where there's not as much 19 competition, you don't have to price as low, so 20 they may not lose money on their eggs. 21 Q. BY MS. CRABTREE: How do you determine 22 the price that you charge customers for eggs?</p>	<p style="text-align: right;">49</p> <p>1 A. It's more important for us to be 2 competitive in the retail market than it is to 3 watch our pennies on eggs. 4 MS. CRABTREE: Let's go ahead and mark 5 Exhibit 4. 6 (Discussion off the record.) 7 (Albertsons Exhibit 4 marked.) 8 MR. MURRAY: Do you want to announce the 9 Bates numbers for the record? 10 MS. CRABTREE: Oh, yeah. It is CM489258. 11 THE WITNESS: Okay. 12 Q. BY MS. CRABTREE: Have you ever seen -- 13 the title of the document is a "Co-Pack Purchase 14 Agreement," dated September 15th, 2007. Have you 15 ever seen this document before? 16 A. I have not. 17 Q. If you turn to page 5 of your 18 Exhibit 2 -- not this one. This one. 19 A. Okay. 20 Q. If you see the top entry there, you see 21 under Source the Bates number for this document 22 corresponds with the top number on that Bates</p>

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<p style="text-align: right;">50</p> <p>1 number?</p> <p>2 A. Okay.</p> <p>3 Q. You agree that's the same number listed</p> <p>4 in Exhibit A on behalf of Albertsons?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. If you could turn to the --</p> <p>7 well, first, do you know who Mahard Egg Farms is?</p> <p>8 A. I do not.</p> <p>9 Q. Do you know if you've ever received</p> <p>10 eggs from Mahard Egg Farms?</p> <p>11 A. I do not.</p> <p>12 Q. Okay. And if you look at the last page</p> <p>13 of Exhibit 4, it says "Exhibit '1', Egg Pricing</p> <p>14 Schedule"?</p> <p>15 A. Um-hum.</p> <p>16 Q. And then there's a series of three</p> <p>17 columns in the middle of that page. Can you tell</p> <p>18 me what that -- those columns mean?</p> <p>19 A. "Size" is the -- is the description of</p> <p>20 the eggs, from jumbo, extra large, or large eggs.</p> <p>21 The "Market" speaks to the Urner Barry regional</p> <p>22 market and the size for each one. And then the</p>	<p style="text-align: right;">52</p> <p>1 Q. Okay.</p> <p>2 A. I do not.</p> <p>3 Q. Okay. You can set this one aside.</p> <p>4 MS. CRABTREE: Let's mark Exhibit 5.</p> <p>5 (Albertsons Exhibit 5 marked.)</p> <p>6 MS. CRABTREE: The Bates is ALBEGED 3.</p> <p>7 THE WITNESS: Okay.</p> <p>8 Q. BY MS. CRABTREE: Do you recognize this</p> <p>9 document?</p> <p>10 A. I have not seen it before, but I -- I</p> <p>11 know what it is.</p> <p>12 Q. What is it?</p> <p>13 A. It's a cost change notification.</p> <p>14 Q. Okay. And the cover page looks to be</p> <p>15 similar to the -- the pricing structure we saw in</p> <p>16 the previous document, and it indicates "New</p> <p>17 Market" and "Old Market" and lists the effective</p> <p>18 date as January 18th, 2009. Is this similar to</p> <p>19 the type of cost change you would receive on a</p> <p>20 weekly basis?</p> <p>21 A. Yes.</p> <p>22 Q. And you see at the bottom it says</p>
<p style="text-align: right;">51</p> <p>1 last column is the underage or discount off of</p> <p>2 Urner Barry.</p> <p>3 Q. Okay. And do you know which Urner --</p> <p>4 oh, it does say "Urner Barry Southeast market,"</p> <p>5 correct?</p> <p>6 A. South Central.</p> <p>7 Q. Oh --</p> <p>8 MR. MURRAY: SC.</p> <p>9 Q. BY MS. CRABTREE: Okay. Do you see in</p> <p>10 the paragraph -- the second paragraph, that starts</p> <p>11 "Mahard will sell eggs" --</p> <p>12 A. Um-hmm.</p> <p>13 Q. -- and then it says "such prices based</p> <p>14 on a previous weeks' Thursday Southeast market"?</p> <p>15 A. Okay.</p> <p>16 Q. And you said you -- you saw "South</p> <p>17 Central." Where did you see South Central?</p> <p>18 A. Under Market in the column section.</p> <p>19 "SC" stands for South Central.</p> <p>20 Q. Okay. Do you know which market you</p> <p>21 were purchasing eggs from from Cal-Maine in 2007?</p> <p>22 A. I do not.</p>	<p style="text-align: right;">53</p> <p>1 "Distribution" and there's a Moark LLC E-mail</p> <p>2 address for "Martha." Do you know who that is?</p> <p>3 A. I do not.</p> <p>4 Q. And underneath that, it says "Diane</p> <p>5 Bible" and then lists an Albertsons' LLC E-mail</p> <p>6 address. Do you know who Diane Bible is?</p> <p>7 A. I do.</p> <p>8 Q. Who is that?</p> <p>9 A. She is a department specialist in the</p> <p>10 Southwest division.</p> <p>11 Q. What department?</p> <p>12 A. Dairy department.</p> <p>13 Q. And underneath that, it lists a</p> <p>14 Roberta Brezinsky with a Moark address. Do you</p> <p>15 know who that is?</p> <p>16 A. I do not.</p> <p>17 Q. And a "cc" to Stan Foster. Do you know</p> <p>18 who Stan Foster is?</p> <p>19 A. I do.</p> <p>20 Q. Who is that?</p> <p>21 A. He was our account exec for Moark at</p> <p>22 that time for covering the New Mexico market.</p>

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<p style="text-align: right;">54</p> <p>1 Q. And if you look at the second page,</p> <p>2 this is -- it looks like the Albertsons Cost</p> <p>3 Change Form we saw before, and it looks like this</p> <p>4 is -- the Bates number on this one is cut off, but</p> <p>5 it ends with BEGED 3. You'll see the vendor is</p> <p>6 marked as "McNally Enterprises" -- or "McAnally</p> <p>7 Enterprises." Do you know who that is?</p> <p>8 A. McAnally, um-hmm.</p> <p>9 Q. Oh, there you go. Who is that?</p> <p>10 A. They are a -- a part, subdivision of</p> <p>11 Moark.</p> <p>12 Q. Okay. So the pricing listed in this</p> <p>13 cost change form would be Moark prices, correct?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And the cost change form, would</p> <p>16 that be generated within Albertsons or would that</p> <p>17 be something the vendor sent to you?</p> <p>18 A. The vendor would fill this out and send</p> <p>19 it over.</p> <p>20 Q. Okay. So you provide this form to your</p> <p>21 vendors?</p> <p>22 A. Um-hmm.</p>	<p style="text-align: right;">56</p> <p>1 had with the Southwest folks?</p> <p>2 A. That was about 20 minutes.</p> <p>3 Q. And when did that occur?</p> <p>4 A. Yesterday.</p> <p>5 Q. Okay. When did you talk to Mr. Klewin?</p> <p>6 A. Yesterday as well.</p> <p>7 Q. Okay. Did you also meet with your</p> <p>8 lawyers to prepare for today?</p> <p>9 A. I did.</p> <p>10 Q. And I don't want to know anything they</p> <p>11 told you, but when did you meet with them?</p> <p>12 A. Yesterday.</p> <p>13 Q. But for about how long?</p> <p>14 A. Three to four hours.</p> <p>15 Q. And you said your retail price is</p> <p>16 based off of a competitive market; is that</p> <p>17 correct?</p> <p>18 A. Yes.</p> <p>19 Q. Who were your competitors for egg</p> <p>20 sales?</p> <p>21 MR. MURRAY: When? Objection. You better</p> <p>22 try to narrow that down because it's changed a lot</p>
<p style="text-align: right;">55</p> <p>1 MS. CRABTREE: We only have three minutes</p> <p>2 left on our tape, so it might be a good time for</p> <p>3 our break.</p> <p>4 THE VIDEOGRAPHER: We are off the record.</p> <p>5 (Recess taken.)</p> <p>6 THE VIDEOGRAPHER: All right. So the camera</p> <p>7 is rolling and we are back on the record.</p> <p>8 Q. BY MS. CRABTREE: The conversations</p> <p>9 that you had to get ready for your deposition,</p> <p>10 when did those take place?</p> <p>11 A. I talk with Marc Nosal just about</p> <p>12 every day. But speaking specifically to this, we</p> <p>13 probably just had conversations over the last</p> <p>14 three days.</p> <p>15 Q. Okay. And about how long would you say</p> <p>16 you spent talking to Mr. Nosal about this?</p> <p>17 A. Probably close to an hour all --</p> <p>18 altogether.</p> <p>19 Q. What about Mr. Klewin? I keep wanting</p> <p>20 to call him "McKlewin."</p> <p>21 A. Probably 20 minutes to a half an hour.</p> <p>22 Q. And what about the conference call you</p>	<p style="text-align: right;">57</p> <p>1 over time.</p> <p>2 Q. BY MS. CRABTREE: Do you have set</p> <p>3 regions? You mentioned your Southwest Region.</p> <p>4 A. Um-hum.</p> <p>5 Q. What other regions do you have?</p> <p>6 A. Specific to LLC, we have the</p> <p>7 Southwest Region and the Southern Region.</p> <p>8 Q. Any others?</p> <p>9 MR. MURRAY: Before or after the --</p> <p>10 Q. BY MS. CRABTREE: Well, that's before</p> <p>11 March, right?</p> <p>12 A. At which time? Yeah.</p> <p>13 MR. MURRAY: Yeah.</p> <p>14 Q. BY MS. CRABTREE: What about</p> <p>15 post-March?</p> <p>16 A. Post-March, I have Southern California,</p> <p>17 Northwest, Intermountain, Jewel, Acme, and Shaw's,</p> <p>18 in addition to Southwest and Southern.</p> <p>19 Q. Okay. Who are your competitors in the</p> <p>20 Southwest Region?</p> <p>21 A. Walmart, Fries, Safeway, Bashas,</p> <p>22 Costco. All -- all the big grocery retailers that</p>

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<p style="text-align: right;">58</p> <p>1 are out there.</p> <p>2 Q. And how do you track what they are</p> <p>3 charging for eggs?</p> <p>4 A. We have people that are assigned to go</p> <p>5 out and price check the sensitive item list every</p> <p>6 week.</p> <p>7 Q. And eggs is on the sensitive item list?</p> <p>8 A. It is.</p> <p>9 Q. What else is on the sensitive item</p> <p>10 list?</p> <p>11 A. Ground beef, bananas, bread, milk.</p> <p>12 Q. What about in the Southern Region? Who</p> <p>13 are your main competitors?</p> <p>14 A. Kroger, Tom Thumb, Walmart, HEB, Aldi,</p> <p>15 Costco.</p> <p>16 Q. Costco is everywhere, isn't it?</p> <p>17 A. As is Walmart and -- and Kroger and</p> <p>18 Safeway. It's all the same folks, just in each</p> <p>19 division they're called different names.</p> <p>20 Q. Okay. So in the Southern California</p> <p>21 Region, would it be the same list?</p> <p>22 A. Yes.</p>	<p style="text-align: right;">60</p> <p>1 competitors. But all, you know, major grocery</p> <p>2 retailers.</p> <p>3 Q. And what about Shaw? What area is</p> <p>4 that?</p> <p>5 A. That's the Boston, primarily the Boston</p> <p>6 area.</p> <p>7 Q. And any differences in your competitors</p> <p>8 there?</p> <p>9 A. Boston, Market Basket is -- is probably</p> <p>10 one of the biggest competitors in that area,</p> <p>11 ShopRite, Shop N Save, A&P, Ahold.</p> <p>12 Q. What is Ahold?</p> <p>13 A. Ahold is a -- it's a holding -- or it's</p> <p>14 a -- it's a -- the parent company is based in</p> <p>15 Europe somewhere, and they -- they own a chain of</p> <p>16 grocery stores along the east coast.</p> <p>17 Q. Okay. We're going to take a look at</p> <p>18 Exhibit 6 now.</p> <p>19 (Albertsons Exhibit 6 marked.)</p> <p>20 Q. BY MS. CRABTREE: When you're ready,</p> <p>21 can you tell me what Exhibit is?</p> <p>22 A. It is a bid sheet for an egg supply</p>
<p style="text-align: right;">59</p> <p>1 Q. And for the Northwest?</p> <p>2 A. The same.</p> <p>3 Q. And for Intermountain?</p> <p>4 A. The same.</p> <p>5 Q. Any differences in the Jewel market?</p> <p>6 A. Jewel has a little bit different</p> <p>7 competitor, and Walmart doesn't have as big of a</p> <p>8 presence there. Mariano's is a major competitor</p> <p>9 in that area.</p> <p>10 Q. What area is that?</p> <p>11 A. Chicagoland.</p> <p>12 Q. Any others in that area?</p> <p>13 A. Dominicks, which is a division of</p> <p>14 Safeway. Costco, of course.</p> <p>15 Q. What area does Acme cover?</p> <p>16 A. That's the Pennsylvania, Philadelphia</p> <p>17 area.</p> <p>18 Q. And any differences in competitors</p> <p>19 there?</p> <p>20 A. They have some different competitors</p> <p>21 out there. There's Ahold, A&P, Giant, Market</p> <p>22 Basket, ShopRite. A lot of -- a lot of different</p>	<p style="text-align: right;">61</p> <p>1 contract.</p> <p>2 Q. How often do you put your eggs out to</p> <p>3 bid?</p> <p>4 A. It varies. But typically, about every</p> <p>5 two years.</p> <p>6 MS. ZIEMIANEK: What is the Bates number on</p> <p>7 this one?</p> <p>8 MS. CRABTREE: Oh, I'm sorry, because I</p> <p>9 didn't say it. It's ALBEGED 671. Sorry, Maggie.</p> <p>10 MS. ZIEMIANEK: No problem. Thanks.</p> <p>11 Q. BY MS. CRABTREE: And is this a form</p> <p>12 that Albertsons would provide to the bidders?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And you see it says "Supplier</p> <p>15 Name" at the top, "Hickman's Family Farms" and</p> <p>16 then under that "Payment Terms"? What does that</p> <p>17 mean, the "Payment Terms"?</p> <p>18 A. It means that after the receipt of the</p> <p>19 goods and the receipt of the invoice, we are</p> <p>20 required to pay them within 14 days.</p> <p>21 Q. Okay. And then you see under that it</p> <p>22 says "South Central Urner Barry Index," and then a</p>

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<p style="text-align: right;">62</p> <p>1 "Proposed Underage" -- which is my new favorite 2 word. 3 Then next to that, it lists "Current," 4 "Variance" and "Savings." Is that something that 5 Albertsons fills out once it gets the bid or is 6 this filled out by Hickman's? 7 A. That's something that Albertsons fills 8 out after the fact. 9 Q. So the stuff to the left of the shaded 10 box would be something that Hickman's fills out or 11 the whole thing is what Albertsons does? 12 A. Albertsons does everything except for 13 what's in the shaded area, and the shaded area is 14 what's filled out by the supplier. 15 Q. Okay. Do you keep these for all bids? 16 A. Um-hum. 17 Q. Do you have an electronic file of them? 18 A. I do. 19 Q. Who kept them before you came to 20 Albertsons in 2010? 21 A. This process would have been performed 22 by SUPERVALU.</p>	<p style="text-align: right;">64</p> <p>1 A. It doesn't say on here, but I believe 2 that I executed this in early 2011. 3 Q. So the -- the 2011 bid you referred to? 4 A. Um-hum. 5 Q. And did Hickman's prevail? 6 A. They did in -- well, let me see. Where 7 is this? Yes. This is where -- this is the New 8 Mexico business that Hickman's did take over. 9 Q. How do you know that? 10 A. Just because I -- I did it. 11 Q. Because it's your job, right? 12 A. Yes. This was my bid. 13 Q. To your understanding, what affects the 14 price that you pay your suppliers for eggs? What 15 factors affect that price? 16 A. I'm sorry. Can you ask the question 17 again? 18 Q. To your understanding, you get these 19 weekly price quotes -- 20 A. Um-hum. 21 Q. -- what affects that price of eggs? 22 A. Just the Urner Barry. My -- my price</p>
<p style="text-align: right;">63</p> <p>1 Q. And you referred to a "transitional 2 agreement"? 3 A. Transition Service Agreement. 4 Q. Transition Service Agreement. Do you 5 have a copy of that? 6 A. I do not. 7 Q. Do you know who does have a copy of 8 that? 9 A. I would imagine our legal team does, 10 but I -- I do not have one. 11 MS. CRABTREE: Which is -- Kevin, we haven't 12 been able to find that, so that will probably be a 13 follow-up from me. 14 MR. MURRAY: Okay. I don't know about 15 that. We'll take whatever follow-up under 16 advisement. 17 Q. BY MS. CRABTREE: And, again, these 18 would be for certified eggs; is that correct? 19 A. Correct. These are UEP certified 20 eggs. 21 Q. Do you know what time period this bid 22 sheet would relate to?</p>	<p style="text-align: right;">65</p> <p>1 is predicated off of whatever the Urner Barry 2 publishes. 3 Q. And if you see the price of eggs go up, 4 do you ever get asked for an explanation or get an 5 explanation as to why the price of eggs is going 6 up? 7 A. No. 8 Q. So do you have any understanding of 9 the factors that go into that Urner Barry price 10 quote? 11 A. There are opinions that are published 12 along with the Urner Barry, market publications 13 that kind of explain what they base their quote 14 off of. 15 Q. And you said you only buy UEP certified 16 eggs, correct? 17 A. Correct. 18 Q. Do you put the UEP certified logo on 19 all of your private label packaging? 20 A. I do not know. 21 Q. Where would you go to find that out? 22 A. I'd -- I would call our packaging</p>

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<p style="text-align: right;">66</p> <p>1 supplier or go look at a -- go look at a package.</p> <p>2 Q. Who is your packaging supplier?</p> <p>3 A. We have a couple of different</p> <p>4 suppliers. Pactiv is our primary supplier of</p> <p>5 molded pulp, and Dolco is our primary supplier of</p> <p>6 foam packaging.</p> <p>7 Q. I'm sorry. Who was the foam again?</p> <p>8 A. Foam is Dolco.</p> <p>9 Q. Dolco.</p> <p>10 MR. MURRAY: You might want to spell that if</p> <p>11 you know.</p> <p>12 THE WITNESS: D-o-l-c-o.</p> <p>13 Q. BY MS. CRABTREE: We would just ask you</p> <p>14 later anyway.</p> <p>15 When you were offered non-certified UEP</p> <p>16 eggs by Hidden Villa, why didn't you go with the</p> <p>17 cheaper, non-certified eggs?</p> <p>18 A. We -- we want to keep our program</p> <p>19 consistent and make sure that we're supplying our</p> <p>20 customers with the -- the same quality yesterday</p> <p>21 as they get tomorrow.</p> <p>22 Q. What is the most -- what do you look to</p>	<p style="text-align: right;">68</p> <p>1 Gary Angell?</p> <p>2 A. Yes.</p> <p>3 Q. What was his position?</p> <p>4 A. He's held a variety of positions. I</p> <p>5 think at the very end he was in charge of</p> <p>6 specialty foods, if I remember correctly.</p> <p>7 Q. Do you carry any eggs other than your</p> <p>8 private label eggs now?</p> <p>9 A. Um-hum.</p> <p>10 Q. What other?</p> <p>11 MR. MURRAY: You have to say yes or no.</p> <p>12 THE WITNESS: Oh, yes.</p> <p>13 Q. BY MS. CRABTREE: What other eggs do</p> <p>14 you carry, or what other brands.</p> <p>15 A. We have a lot of brands. It varies by</p> <p>16 region. We have Land O'Lakes. We have Eggland's</p> <p>17 Best. We have regional brands in -- in each</p> <p>18 particular area.</p> <p>19 Q. What about for commodity eggs? Do you</p> <p>20 carry any competing brands within -- with your</p> <p>21 private labels?</p> <p>22 A. In some -- in some areas we do, yes.</p>
<p style="text-align: right;">67</p> <p>1 to determine who your egg suppliers are going to</p> <p>2 be? What factors do you look at?</p> <p>3 A. Ability to supply is probably first and</p> <p>4 foremost. Price is always right up there, as far</p> <p>5 as what's required, and then quality to make sure</p> <p>6 that they are going to be able to provide a good</p> <p>7 quality carton, good service, good eggs.</p> <p>8 Q. Anything else?</p> <p>9 A. No.</p> <p>10 Q. UEP certification would be one?</p> <p>11 A. That's -- yeah. That's mandatory to</p> <p>12 even participate in the bid.</p> <p>13 Q. When you were with old Albertsons, did</p> <p>14 you have anything to do with egg procurement?</p> <p>15 A. I did not.</p> <p>16 Q. Do you know who did?</p> <p>17 A. At the very end, the -- the lady that</p> <p>18 was in charge of sourcing, her name was Darlene</p> <p>19 Boyce.</p> <p>20 Q. B-o-y-c-e?</p> <p>21 A. Yes.</p> <p>22 Q. Did you ever have any dealings with</p>	<p style="text-align: right;">69</p> <p>1 Q. Okay. And do you usually price your</p> <p>2 private label less than the other commodity egg</p> <p>3 brands that you're carrying?</p> <p>4 A. Yes.</p> <p>5 Q. Do you carry any non-UEP certified</p> <p>6 commodity eggs?</p> <p>7 A. That is -- it's possible. I -- I don't</p> <p>8 know, to be certain.</p> <p>9 Q. When you run a sale or promotion on</p> <p>10 eggs, what does that do to your volume of sales?</p> <p>11 A. It increases unit movement, but doesn't</p> <p>12 always increase dollar sales.</p> <p>13 Q. If I wanted to find out how many eggs</p> <p>14 you -- that Albertsons bought in 2012 from each</p> <p>15 supplier, how would I do that?</p> <p>16 A. In -- for 2012, there should be</p> <p>17 purchase records at the distribution center.</p> <p>18 Q. Where do you have distribution centers</p> <p>19 as, let's say, pre-March of this year?</p> <p>20 A. The only one that handled eggs would</p> <p>21 have been in Tollefson, Arizona. Tollefson --</p> <p>22 Phoenix, Arizona.</p>

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<p style="text-align: right;">70</p> <p>1 Q. Okay. That's your only distribution</p> <p>2 center that handles eggs?</p> <p>3 A. That handles eggs.</p> <p>4 Q. Prior to March of this year?</p> <p>5 A. Correct.</p> <p>6 Q. And if I wanted to know how much -- how</p> <p>7 many eggs you sold to customers last year, where</p> <p>8 would I look?</p> <p>9 A. We can pull scan data out of the data</p> <p>10 warehouse to -- to determine how many dozens or</p> <p>11 units of -- of each egg were sold.</p> <p>12 Q. And when you say "the data warehouse,"</p> <p>13 what is that?</p> <p>14 A. All of the scan data that -- that goes</p> <p>15 through the registers all feeds into a data</p> <p>16 warehouse.</p> <p>17 Q. Do you know if that's a database or a</p> <p>18 particular type of database?</p> <p>19 A. I don't know.</p> <p>20 Q. Who would know?</p> <p>21 A. Probably our IT department.</p> <p>22 Q. Do you maintain a particular margin</p>	<p style="text-align: right;">72</p> <p>1 bid on Albertsons business?</p> <p>2 A. Not that I'm aware of.</p> <p>3 Q. We talked about Cal-Maine. We talked</p> <p>4 about Sparboe.</p> <p>5 A. Um-hum.</p> <p>6 Q. Have you ever had any discussions with</p> <p>7 Sparboe about a process verified program?</p> <p>8 A. Yes.</p> <p>9 Q. And can you tell me about that?</p> <p>10 A. They use that in place of UEP</p> <p>11 certification is my understanding.</p> <p>12 Q. So have you purchased eggs under the</p> <p>13 process verified program?</p> <p>14 A. We did.</p> <p>15 Q. Did those eggs cost more or less than</p> <p>16 your UEP certified eggs?</p> <p>17 A. They didn't necessarily cost more or</p> <p>18 less. They were contracted as off of the Urner</p> <p>19 Barry. So they -- they were based off of whatever</p> <p>20 we negotiated as an underage from Urner Barry.</p> <p>21 MS. CRABTREE: Let's go ahead and mark</p> <p>22 Exhibit 7.</p>
<p style="text-align: right;">71</p> <p>1 between what you pay for eggs and what you sell</p> <p>2 them for?</p> <p>3 A. Not really. For the most part, we --</p> <p>4 we base our pricing, our retail prices off of</p> <p>5 whatever the market is doing. So it's -- it's</p> <p>6 hard to maintain a certain margin if -- if the</p> <p>7 retail market doesn't allow you to.</p> <p>8 Q. Have you ever purchased eggs or egg</p> <p>9 products from Rose Acre Farms?</p> <p>10 A. Not directly, that I'm aware of.</p> <p>11 Q. Have they ever bid on your egg</p> <p>12 business, do you know?</p> <p>13 A. Not with me. They may have with</p> <p>14 SUPERVALU when SUPERVALU was conducting bids.</p> <p>15 Q. Have you ever purchased egg or egg</p> <p>16 products from Midwest Poultry?</p> <p>17 A. Not that I am aware of.</p> <p>18 Q. What about NuCal?</p> <p>19 A. Yes.</p> <p>20 Q. Yeah, we went over that, correct?</p> <p>21 A. Um-hum.</p> <p>22 Q. Do you know if Midwest Poultry has ever</p>	<p style="text-align: right;">73</p> <p>1 (Albertsons Exhibit 7 marked.)</p> <p>2 MS. CRABTREE: And this is SVL_EGGS_20594.</p> <p>3 Q. BY MS. CRABTREE: You kind of have to</p> <p>4 look at this a little backwards. The first page</p> <p>5 is the "First Amendment to Our Brands Supply</p> <p>6 Agreement," followed by an E-mail.</p> <p>7 A. Okay.</p> <p>8 Q. Have you ever seen this document</p> <p>9 before?</p> <p>10 A. I have not.</p> <p>11 Q. Fair enough.</p> <p>12 And I'll represent to you it looks like</p> <p>13 this document is a contract change form. It</p> <p>14 indicates removal of animal care certification</p> <p>15 number and the addition of the language, "Supplier</p> <p>16 shall maintain standard industry animal care</p> <p>17 guidelines throughout the term of the agreement</p> <p>18 for products provided to Albertsons."</p> <p>19 MR. MURRAY: This is -- I point out for the</p> <p>20 record, this is old Albertsons, Albertsons, Inc.,</p> <p>21 not Albertsons LLC.</p> <p>22 MS. CRABTREE: And I get that. I just --</p>

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<p style="text-align: right;">74</p> <p>1 Q. BY MS. CRABTREE: Does this indicate to</p> <p>2 you that Sparboe was given permission to be</p> <p>3 non-UEP certified while providing eggs to</p> <p>4 Albertsons?</p> <p>5 MR. MURRAY: Inc.</p> <p>6 MS. CRABTREE: Inc.</p> <p>7 THE WITNESS: To the original Albertsons,</p> <p>8 that's what it looks like.</p> <p>9 Q. BY MS. CRABTREE: Was Sparboe permitted</p> <p>10 to provide non-UEP certified eggs to current</p> <p>11 Albertsons?</p> <p>12 A. Yes.</p> <p>13 Q. And that was provided they provide them</p> <p>14 under this process verified program?</p> <p>15 A. I'm assuming that it was -- that it was</p> <p>16 provided they maintain standard industry animal</p> <p>17 care guidelines.</p> <p>18 Q. Okay. So for current Albertsons --</p> <p>19 A. Um-hum.</p> <p>20 Q. -- you were buying eggs from Sparboe</p> <p>21 until 2011, correct?</p> <p>22 A. Correct.</p>	<p style="text-align: right;">76</p> <p>1 Q. Have you ever received inquiries from</p> <p>2 customers about animal welfare for the products</p> <p>3 that Albertsons sells?</p> <p>4 A. I have not, no.</p> <p>5 Q. Have you ever received any attention</p> <p>6 from animal rights groups about animal welfare for</p> <p>7 the products that Albertsons sells?</p> <p>8 A. I have not.</p> <p>9 Q. Who would handle those inquiries if a</p> <p>10 customer made an inquiry about animal welfare?</p> <p>11 A. Today, it would probably be our</p> <p>12 director of communications or communications</p> <p>13 department, I guess.</p> <p>14 Q. And who is that?</p> <p>15 A. Chris -- Chris Wilcox, Christine</p> <p>16 Wilcox.</p> <p>17 Q. And you say "today." How far back</p> <p>18 would that go?</p> <p>19 A. Until whenever -- I don't know when she</p> <p>20 came on board.</p> <p>21 Q. But that would be the position that</p> <p>22 would respond to that?</p>
<p style="text-align: right;">75</p> <p>1 Q. Were the -- were those eggs produced</p> <p>2 under the UEP certified program or the process</p> <p>3 verified program?</p> <p>4 A. To my knowledge, they were under the</p> <p>5 process verified program.</p> <p>6 Q. So Albertsons was purchasing non-UEP</p> <p>7 certified eggs, correct?</p> <p>8 A. Yes.</p> <p>9 Q. We got there.</p> <p>10 Have you ever purchased any eggs from</p> <p>11 Ohio Fresh?</p> <p>12 A. Not to my knowledge.</p> <p>13 Q. What about Daybreak Foods?</p> <p>14 A. Not to my knowledge.</p> <p>15 Q. What about Sauder?</p> <p>16 A. No, not to my knowledge.</p> <p>17 Q. And you said you were purchasing liquid</p> <p>18 eggs from Michael's, correct?</p> <p>19 A. We have in the past, yes.</p> <p>20 Q. Have you ever purchased shell eggs from</p> <p>21 Michael Foods?</p> <p>22 A. Not that I'm aware of.</p>	<p style="text-align: right;">77</p> <p>1 A. Um-hum.</p> <p>2 Q. Fair enough.</p> <p>3 MS. CRABTREE: Let's mark Exhibit 8.</p> <p>4 (Albertsons Exhibit 8 marked.)</p> <p>5 MS. CRABTREE: Oh, this is ALBEGED 579.</p> <p>6 THE WITNESS: Okay.</p> <p>7 Q. BY MS. CRABTREE: Do you know what this</p> <p>8 is?</p> <p>9 A. It looks to be a recommended</p> <p>10 promotional calendar from Eggland's Best.</p> <p>11 Q. Would this be a document that</p> <p>12 Albertsons would generate or that you would</p> <p>13 receive from a supplier?</p> <p>14 A. Supplier.</p> <p>15 Q. Is this the type of a document you</p> <p>16 would receive?</p> <p>17 A. No.</p> <p>18 Q. Are you involved at all in the planning</p> <p>19 of temporary -- is it TPR, temporary price</p> <p>20 reduction?</p> <p>21 A. That's correct terminology. No, I am</p> <p>22 not involved.</p>

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21 (Pages 78 to 81)

<p style="text-align: right;">78</p> <p>1 Q. Okay. To your knowledge -- if you --</p> <p>2 if you look at the last page, I think that's the</p> <p>3 easiest one to look at. The last column here</p> <p>4 indicates "National Television." Do you know what</p> <p>5 that means?</p> <p>6 A. My assumption is that Egglund's Best</p> <p>7 was running television advertising during those</p> <p>8 weeks.</p> <p>9 Q. Okay. And do you -- do you know, do</p> <p>10 you typically plan your -- your specials and sales</p> <p>11 up to a year in advance?</p> <p>12 A. No, we do not.</p> <p>13 Q. You do not. That was easy.</p> <p>14 Is the UEP certified program in place</p> <p>15 because you believe you get higher quality eggs</p> <p>16 from that program?</p> <p>17 A. No.</p> <p>18 Q. Is it because Albertsons has concern</p> <p>19 about the hen welfare of the eggs that it gets?</p> <p>20 A. No.</p> <p>21 Q. Why is it important that Albertsons</p> <p>22 have the UEP certification?</p>	<p style="text-align: right;">80</p> <p>1 Q. So if we pull the data on your egg</p> <p>2 purchases, let's say for last year, that would not</p> <p>3 include any of the allowances or payments that you</p> <p>4 might have received for specials?</p> <p>5 A. The allowances can come in several</p> <p>6 different forms. So some of them impact direct</p> <p>7 purchase cost of goods. Some of them impact after</p> <p>8 the fact.</p> <p>9 Q. Okay. Do you participate in any</p> <p>10 grocery cooperatives?</p> <p>11 A. No. Not that I'm aware of.</p> <p>12 Q. Do you subscribe to any periodical or</p> <p>13 magazine or publication related to the egg</p> <p>14 industry?</p> <p>15 A. No.</p> <p>16 Q. Do you ever receive United Voices?</p> <p>17 A. No.</p> <p>18 Q. Okay. Have you ever had any</p> <p>19 communications with anyone from UEP?</p> <p>20 A. No, I don't believe I have.</p> <p>21 Q. What facts does Albertsons have that</p> <p>22 Rose Acre Farms conspired to increase egg prices?</p>
<p style="text-align: right;">79</p> <p>1 A. Mostly, for the consistency of the --</p> <p>2 the shop for the customer.</p> <p>3 Q. Okay. But you don't know whether it's</p> <p>4 on the cartons or not?</p> <p>5 A. I do not know.</p> <p>6 Q. Do you know what "slotting" is?</p> <p>7 A. I do.</p> <p>8 Q. What is it?</p> <p>9 A. It is a fee that is sometimes charged</p> <p>10 to manufacturers for placement of products.</p> <p>11 Q. You said it is a fee to the</p> <p>12 manufacturers. Would that be your suppliers?</p> <p>13 A. Correct.</p> <p>14 Q. Do your commodity egg suppliers ever</p> <p>15 pay slotting fees?</p> <p>16 A. No.</p> <p>17 Q. We talked a little bit earlier about</p> <p>18 promotions and sometimes your suppliers will give</p> <p>19 you a price break to run a particular promotion.</p> <p>20 Accountingwise, would that information be in the</p> <p>21 same place as the price you pay for eggs?</p> <p>22 A. Not necessarily.</p>	<p style="text-align: right;">81</p> <p>1 MR. MURRAY: Objection to the form of the</p> <p>2 question. It invades the attorney-client work</p> <p>3 product privilege.</p> <p>4 You can answer if you know anything</p> <p>5 outside of what you've learned from communications</p> <p>6 with counsel.</p> <p>7 THE WITNESS: I -- I don't know of any.</p> <p>8 Q. BY MS. CRABTREE: We're going to go</p> <p>9 through a list of these though.</p> <p>10 A. Okay.</p> <p>11 Q. What facts do you have that Midwest</p> <p>12 Poultry conspired to increase egg prices?</p> <p>13 MR. MURRAY: Same -- same objection and same</p> <p>14 caution.</p> <p>15 You can answer if you know any facts</p> <p>16 outside of communications you've had with counsel.</p> <p>17 THE WITNESS: I do not know of any.</p> <p>18 Q. BY MS. CRABTREE: What facts do you</p> <p>19 have that NuCal conspired to increase egg prices?</p> <p>20 MR. MURRAY: Same objection and the same</p> <p>21 caution about communications with counsel.</p> <p>22 THE WITNESS: I do not know of any.</p>

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22 (Pages 82 to 85)

<p style="text-align: right;">82</p> <p>1 Q. BY MS. CRABTREE: What facts do you</p> <p>2 have that Cal-Maine conspired to increase egg</p> <p>3 prices?</p> <p>4 MR. MURRAY: Same objection, same caution.</p> <p>5 THE WITNESS: I do not know of any.</p> <p>6 Q. BY MS. CRABTREE: What facts do you</p> <p>7 have that Sparboe Farms conspired to increase egg</p> <p>8 prices?</p> <p>9 MR. MURRAY: Same objection and same</p> <p>10 caution.</p> <p>11 THE WITNESS: I do not know of any.</p> <p>12 Q. BY MS. CRABTREE: What facts do you</p> <p>13 have that Moark conspired to increase egg prices?</p> <p>14 MR. MURRAY: Same objection and same</p> <p>15 caution.</p> <p>16 THE WITNESS: I do not know of any.</p> <p>17 Q. BY MS. CRABTREE: What facts do you</p> <p>18 have that Ohio Fresh conspired to increase egg</p> <p>19 prices?</p> <p>20 MR. MURRAY: Same objection, same caution.</p> <p>21 THE WITNESS: I do not know of any.</p> <p>22 Q. BY MS. CRABTREE: What facts do you</p>	<p style="text-align: right;">84</p> <p>1 is rolling. We are back on the record.</p> <p>2 Q. BY MS. CRABTREE: Have you ever</p> <p>3 received instructions not to destroy any documents</p> <p>4 related to this case?</p> <p>5 A. I have.</p> <p>6 Q. Do you remember when that was?</p> <p>7 A. It was right after I first came on</p> <p>8 board with the LLC, so 2010.</p> <p>9 Q. And have you ever been asked to gather</p> <p>10 information related to this case?</p> <p>11 A. Nothing more than just saving the</p> <p>12 documents that -- everything that has to do with</p> <p>13 eggs.</p> <p>14 Q. Do you have a non-Albertsons E-mail</p> <p>15 address?</p> <p>16 A. Yes.</p> <p>17 Q. Do you ever conduct business through</p> <p>18 that E-mail address?</p> <p>19 A. No.</p> <p>20 MS. CRABTREE: Well, that was anticlimactic.</p> <p>21 I think I'm done for today.</p> <p>22 MR. MURRAY: Did you have any questions?</p>
<p style="text-align: right;">83</p> <p>1 have that Hillandale Farms conspired to increase</p> <p>2 egg prices?</p> <p>3 MR. MURRAY: Same objection, same caution.</p> <p>4 THE WITNESS: I do not know of any.</p> <p>5 Q. BY MS. CRABTREE: What facts do you</p> <p>6 have that Michael's Foods conspired to increase</p> <p>7 egg prices?</p> <p>8 MR. MURRAY: Same objection, same caution.</p> <p>9 THE WITNESS: I do not know of any.</p> <p>10 Q. BY MS. CRABTREE: What facts do you</p> <p>11 have that Sauder, Inc. or R.W. Sauder conspired to</p> <p>12 increase egg prices?</p> <p>13 MR. MURRAY: Same objection and same</p> <p>14 caution.</p> <p>15 THE WITNESS: I do not know of any.</p> <p>16 MS. CRABTREE: Can we go off the record for</p> <p>17 just a minute.</p> <p>18 MR. MURRAY: Sure.</p> <p>19 THE VIDEOGRAPHER: Okay. And we are off the</p> <p>20 record.</p> <p>21 (Recess taken.)</p> <p>22 THE VIDEOGRAPHER: All right. So the camera</p>	<p style="text-align: right;">85</p> <p>1 MS. CRABTREE: Do you have any further --</p> <p>2 MR. ESSENMACHER: Indirect purchasers have</p> <p>3 no questions.</p> <p>4 MR. MURRAY: Does anybody on the phone have</p> <p>5 any questions?</p> <p>6 MS. ZIEMIANEK: None from me.</p> <p>7 MS. MARKOWITZ: No.</p> <p>8 MR. MURRAY: Okay. I have two very brief</p> <p>9 questions.</p> <p>10 EXAMINATION</p> <p>11 BY MR. MURRAY:</p> <p>12 Q. Mr. Pontius, is it your understanding</p> <p>13 that Albertsons LLC has retained counsel to</p> <p>14 prosecute this lawsuit against the -- the egg</p> <p>15 producers?</p> <p>16 A. That's my understanding, yes.</p> <p>17 Q. And it is -- is it also your</p> <p>18 understanding that Albertsons LLC is relying on</p> <p>19 its counsel to gather the facts necessary to</p> <p>20 prosecute this antitrust case against the egg</p> <p>21 producers?</p> <p>22 A. Yes.</p>

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23 (Pages 86 to 88)

<div style="text-align: right;">86</div> <div style="margin-top: 10px;"> <p>1 MR. MURRAY: Okay. I have no further</p> <p>2 questions.</p> <p>3 MS. CRABTREE: Ta-da.</p> <p>4 THE VIDEOGRAPHER: Okay. So we are off the</p> <p>5 record.</p> <p>6 (The deposition concluded at 11:09 a.m.)</p> <p>7 -oo0oo-</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> </div>	<div style="text-align: right;">88</div> <div style="margin-top: 10px;"> <p>1 REPORTER'S CERTIFICATE</p> <p>2</p> <p>3 I, BROOKE R. BOHR, a Notary Public in</p> <p>4 and for the State of Idaho, do hereby certify:</p> <p>5 That prior to being examined, the</p> <p>6 witness named in the foregoing deposition was by</p> <p>7 me duly sworn to testify the truth, the whole</p> <p>8 truth, and nothing but the truth;</p> <p>9 That said deposition was taken down by</p> <p>10 me in shorthand at the time and place therein</p> <p>11 named and thereafter reduced into typewriting</p> <p>12 under my direction, and that the foregoing</p> <p>13 transcript contains a full, true, and verbatim</p> <p>14 record of the said deposition.</p> <p>15 I further certify that I have no</p> <p>16 interest in the event of the action.</p> <p>17 WITNESS my hand and seal September 9,</p> <p>18 2013.</p> <p>19</p> <p>20 NOTARY PUBLIC in and for the State of Idaho;</p> <p>21 residing at Meridian, Idaho.</p> <p>22 My commission expires September 7, 2019.</p> <p>CSR No. 753</p> </div>
<div style="text-align: right;">87</div> <div style="margin-top: 10px;"> <p>1 VERIFICATION</p> <p>2 STATE OF IDAHO)</p> <p>3)</p> <p>4 County of Ada)</p> <p>5</p> <p>6 I, ROBERT PONTIUS, being first duly</p> <p>7 sworn on my oath, depose and say:</p> <p>8 That I am the witness named in the</p> <p>9 foregoing deposition, taken on August 29, 2013,</p> <p>10 consisting of pages numbered 1 to 88, inclusive;</p> <p>11 That I have read the said deposition and</p> <p>12 know the contents thereof; that the questions</p> <p>13 contained therein were propounded to me; that the</p> <p>14 answers to said questions were given by me, and</p> <p>15 that the answers as contained therein (or as</p> <p>16 corrected by me therein) are true and correct.</p> <p>17</p> <p>18 DEPONENT</p> <p>19</p> <p>20 Signed and sworn before me this of , .</p> <p>21</p> <p>22 NOTARY PUBLIC</p> <p>Residing at</p> <p>My commission expires</p> </div>	

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